

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERTA MARTINEZ,

Plaintiff,

vs.

No. 1:14-CV-00761 JCH-KK

BOARD OF COUNTY COMMISSIONERS
FOR RIO ARRIBA COUNTY,

Defendant.

**JOINT MOTION OF THE PARTIES REMANDING
STATE LAW CLAIMS TO THE FIRST JUDICIAL DISTRICT
COURT, STATE OF NEW MEXICO, RIO ARRIBA COUNTY**

COME NOW the parties, Plaintiff Roberta Martinez and Defendant Rio Arriba County Board of County Commissioners, by and through their counsel of record, and move to remand this matter to the First Judicial District Court, County of Rio Arriba.

As grounds for their motion, the parties state as follows:

1. On February 4, 2013, Plaintiff filed a Complaint for Damages with the First Judicial District Court. No federal question claim was asserted therein. Doc. 1.
2. Defendant Rio Arriba County Board of County Commissioners answered the Complaint on February 11, 2013. Doc. 1.
3. In response to a motion from the Defendant Rio Arriba County Board of County Commissioners, the state district court entered an order granting the County Commission partial summary judgment as to Counts III, IV and V of the Complaint alleging violation of the New Mexico Human Rights Act, discrimination and intentional infliction of emotional distress. Doc. 1.

4. On July 24, 2014, Plaintiff raised a claim under the Americans with Disabilities Act, 42 U.S.C. § 12112, in a response memorandum of law in opposition to the County Commission's motion for summary judgment as to Counts I and II of Plaintiff's Complaint alleging breach of contract and wrongful discharge. Doc. 1.

5. By established case law, Plaintiff's response memorandum of law was an "other paper" as contemplated by 28 U.S.C. § 1446(b)(3) and subjected the suit to be removed to this Court based on federal question jurisdiction. Doc. 1.

6. Defendant thus removed Plaintiff's suit to this Court on August 22, 2014 after there was no response to an inquiry as to whether Plaintiff was now pursuing a federal claim. Doc. 1.

7. A status conference was held on November 18, 2014. Plaintiff's counsel advised the Court at that time that Plaintiff is not pursuing a federal claim. Doc. 18.

8. On December 3, 2014, Plaintiff's counsel filed a notice in this Court confirming in writing that Plaintiff is not pursuing a federal claim in this matter.

9. In light thereof, the parties agree that this matter should be remanded to the First Judicial District Court, County of Rio Arriba, and ask the Court to enter the order approved by the parties and submitted to chambers in order effect remand of this matter to state district court.

Respectfully submitted,

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